

John Eric Olson  
Hill Rivkins LLP  
Attorneys for Defendant  
45 Broadway, 15<sup>th</sup> Floor  
New York, NY 10006  
Tel.: 212-669-0600  
Fax: 212-669-0698  
e-mail: [jolson@hillrivkins.com](mailto:jolson@hillrivkins.com)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STARNET INSURANCE COMPANY  
As subrogee of Todd Merrill and  
Associates, Inc.,

Case No.: 1:15-cv-07608-PKC

Plaintiffs,

**ANSWER AND COUNTERCLAIM**

- against -

HEDLEY'S, INC.,

Defendant.

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The defendant, Hedley's, Inc., (hereinafter "Hedley's") by and through its attorneys, HILL RIVKINS LLP, as and for an Answer to the Complaint, and a Counter-claim against StarNet Insurance Company a/s/o Todd Merrill and Associates, Inc. (hereinafter "StarNet"), alleges upon information and belief as follows:

**INTRODUCTION**

1. Hedley's admits that this is an action for breach of a contract of carriage but except as so admitted denies the remaining allegations of Paragraph 1 of the Complaint.

2. Hedley's admits the allegations of Paragraph 2 of the Complaint.

**PARTIES**

3. Hedley's denies information and knowledge sufficient to respond to the allegations of Paragraph 3 of the Complaint.

4. Hedley's denies information and knowledge sufficient to respond to the allegations of Paragraph 4 of the Complaint.

5. Hedley's admits the allegations of Paragraph 5 of the Complaint, except the street address is 271 Scholes Street.

6. Hedley's admits the allegations of Paragraph 6 of the Complaint.

7. Hedley's admits the allegations of Paragraph 7 of the Complaint.

8. Hedley's admits the allegations of Paragraph 8 of the Complaint.

**JURISDICTION**

9. Hedley's admits the allegations of Paragraph 9 of the Complaint.

**BACKGROUND**

10. Hedley's denies information and knowledge sufficient to respond to the allegations of Paragraph 10 of the Complaint.

11. Hedley's refers to the invoice describing the services to be performed, and denies the remaining allegations of Paragraph 11 of the Complaint.

12. Hedley's denies the allegations of paragraph 12 of the Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION**

13. Hedley's repeats and realleges each and every response to Paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. Hedley's admits the allegations contained in Paragraph 13 of the Complaint.

15. Hedley's denies the allegations contained in Paragraph 14 of the Complaint.

16. Hedley's denies the allegations contained in Paragraph 15 of the Complaint.

17. Hedley's denies information and knowledge sufficient to respond to the allegations of Paragraph 16 of the Complaint.

18. Hedley's denies the allegations contained in Paragraph 17 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Hedley's will show that Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate its damages, if any, and its claims are therefore barred in whole or in part.

#### **THIRD AFFIRMATIVE DEFENSE**

Hedley's denies liability and states that the subject loss, if any, occurred due to the intervening, superseding, or concurring actions or inactions of third parties not under the control of Hedley's and Hedley's has no liability.

#### **FOURTH AFFIRMATIVE DEFENSE**

Hedley's is entitled to all the benefits, protection, and limitations of liability contained in the applicable bill of lading, including, but not limited to, provision 25 (A)(b).

#### **FIFTH AFFIRMATIVE DEFENSE**

In the event there is any loss or damage to the cargo alleged in the Complaint, which is denied, such loss or damage arose or resulted from the condition of the cargo when delivered or from an inherent defect, quality or vice of the goods or insufficiency of packaging, or by act of omission of the shipper or owners of the goods, their agents or representatives, including but not

limited to, acts or omissions of the shipper's representative at loading, transshipment and discharge and, therefore, Hedley's has no liability in this matter.

**SIXTH AFFIRMATIVE DEFENSE**

If there was any loss or damage to the cargo as alleged in the Complaint, which is denied, such loss or damage arose or resulted from the negligence of the shipper and/or receiver.

**SEVENTH AFFIRMATIVE DEFENSE**

Service of Process was insufficient.

**EIGHTH AFFIRMATIVE DEFENSE**

The Complaint must be dismissed as the Plaintiffs failed to serve a notice of claim upon Hedley's within nine months, 49 CFR 370.

**NINTH AFFIRMATIVE DEFENSE**

StarNet is not the real party in interest.

**TENTH AFFIRMATIVE DEFENSE**

Any payment made to the artist by StarNet or Todd Merrill was gratuitous and the payment cannot be claimed against Hedley's.

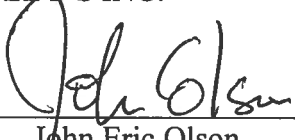
**AS AND FOR A COUNTERCLAIM  
AGAINST STARNET A/S/O TODD  
MERRILL AND ASSOCIATES, INC.**

1. On or about February, 2015, Todd Merrill and Hedley's acted pursuant to an invoice and bill of lading to transport certain goods, round trip, New York to Miami and back to New York.
2. Hedley's invoiced Todd Merrill \$13,735 for the agreed upon service.
3. Despite frequent demands, Todd Merrill has not paid this invoice.
4. Hedley's has performed all the duties agreed to between Hedley's and Todd Merrill.

WHEREFORE, defendant Hedley's requests that Plaintiffs' Complaint be dismissed, and that a judgment be entered against Todd Merrill on Hedley's counterclaim in the amount of \$13,735, plus interest from February 17, 2015, with costs, expenses and attorneys' fees of this action, and for such other and further relief as this Court may find just and proper.

Dated: New York, New York  
January 15, 2016

HILL RIVKINS LLP  
Attorneys for Defendant  
HEDLEY'S INC.

By:   
John Eric Olson

45 Broadway, 15<sup>th</sup> Floor  
New York, NY 10006  
Tel.: 212-669-0600  
Fax: 212-669-0698  
E-mail: [jolson@hillrivkins.com](mailto:jolson@hillrivkins.com)

TO: ROSNER NOCERA & RAGONE, LLP  
Eliot L. Greenberg, Esq.  
Attorneys for Plaintiff  
61 Broadway, Suite 1900  
New York, NY 10006  
Tel.: 212-635-2244

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